UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/CO/72/PRK
27 August 2001

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Seventy-second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

1. The Committee considered the second periodic report of the Democratic People's Republic of Korea (CCPR/C/PRK/2000/2) at its 1944th to 1946th meetings, held on 19 and 20 July 2001, and adopted the following concluding observations at its 1953rd meeting, held on 26 July 2001.

A. Introduction

2. The Committee welcomes the submission of the second periodic report, which contains detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the dialogue with the State party after an interval of more than 17 years. The Committee welcomes the State party's decision to send a strong delegation from its capital, composed of representatives of various government authorities, for the examination of the second periodic report, and the readiness expressed by the delegation to continue the dialogue with the Committee after the examination of the report. The Committee is also pleased to note that the delegation of the State party recognized the importance of the Committee's task and intimated that the Committee could expect more prompt reporting in the future. The Committee regrets, however, the considerable delay in the submission of the report, which was due in 1987. It regrets the lack of information on the human rights situation in practice, as well as the absence of facts and data on the implementation of the Covenant. As a result, a number of credible and substantiated allegations of violations of Covenant provisions which have been brought to the attention of the Committee could not be addressed effectively and the Committee found it difficult to determine whether individuals in the State party's territory and subject to its jurisdiction fully and effectively enjoy their fundamental rights under the Covenant.

B. Positive aspects

3. The Committee appreciates the efforts undertaken by the State party to translate and make available texts of domestic legislation relevant to the examination of the second periodic report, which greatly facilitated the Committee's work.

4. The Committee welcomes the reduction of the number of criminal offences carrying the death penalty from 33 to 5, as well as the readiness, mentioned in the report and confirmed by the delegation, further to review the issue of capital punishment with a view to its abolition.

5. The Committee appreciates that the delegation acknowledged the need to improve the condition of human rights in several areas covered by the Covenant, notably the situation of women in the Democratic People's Republic of Korea; in that context, the Committee welcomes the ratification by the State party, in February 2001, of the Convention on the Elimination of All Forms of Discrimination against Women.

6. The Committee welcomes as a positive sign the fact that exchange visits between families from the State party and the Republic of Korea, however limited, have taken place on three occasions since the Pyongyang Declaration of 15 June 2000.

7. The Committee also appreciates the discontinuation of administrative internment in the State party.

C. Subjects of concern and recommendations

8. The Committee remains concerned about constitutional and legislative provisions that seriously endanger the impartiality and independence of the judiciary, notably that the Central Court is accountable to the Supreme People's Assembly under article 162 of the Constitution. Furthermore, article 154 of the Constitution limits the tenure of judges to five years and article 129 of the Criminal Code subjects judges to criminal liability for handing down "unjust judgements". Given the roles assigned to the judiciary under articles 2 and 14, paragraph 1, of the Covenant, these legal provisions have an adverse impact on the protection of human rights guaranteed under the Covenant and endanger the independence of the judiciary required by article 14.1 of the Covenant.

> The State party should take appropriate measures to ensure and protect the independence and impartiality of the judiciary at all levels.

9. The Committee has noted uncertainty about the status of the Covenant in the State party's internal legal framework. It notes that, pursuant to article 17 of the Treaty Law of December 1998, the Covenant has the same status as domestic law. However, doubts remain as to whether the Covenant would have primacy over domestic law if the latter is in conflict with Covenant provisions.

The State party is requested to provide information, in its next periodic report to the Committee, about the situation that would prevail in the event of a conflict between the Covenant and domestic law, including the Constitution. The Committee wishes to receive from the State party more precise information about the number of cases in which the Covenant has been in fact invoked before the domestic courts, and with what result.

10. The Committee is concerned that, in addition to judicial protection, there is no independent national institution for the promotion and protection of human rights. It considers that article 69 of the Constitution and the Law on Complaint and Petition granting every citizen the right to submit complaints about the encroachment of his or her rights is no substitute for such an independent monitoring body.

The State party should consider the establishment of a national human rights institution (art. 2 of the Covenant).

11. The Committee is further concerned about the limited number of human rights organizations in the Democratic People's Republic of Korea, and the limited access to the State party's territory that is accorded to human rights organizations, as reflected in the small number of international human rights non-governmental organizations that have been granted permission to visit the Democratic People's Republic of Korea over the past decade.

The State party should grant access to its territory to international human rights organizations and other international bodies on a regular basis at their request and ensure accessibility to indispensable information about the promotion and protection of human rights.

12. Given the State party's obligation, under article 6 of the Covenant, to protect the life of its citizens and to take measures to reduce infant mortality and increase life expectancy, the Committee remains seriously concerned about the lack of measures by the State party to deal with the food and nutrition situation in the Democratic People's Republic of Korea and the lack of measures to address, in cooperation with the international community, the causes and consequences of the drought and other natural disasters which seriously affected the country's population in the 1990s.

The Committee recalls paragraph 5 of its General Comment No. 6 on article 6 of the Covenant, adopted at its sixth session, which recommends that States parties "take all possible measures to reduce infant mortality and increase life expectancy, especially in adopting measures to eliminate malnutrition". The State party should provide the Committee with supplementary information on this issue.

13. The Committee takes note of the delegation's information that the death penalty has rarely been imposed and carried out in the past three years. While the Committee appreciates that the number of offences carrying the death penalty has been reduced to five, it remains seriously concerned that, of those five offences, as the report states, four are essentially political offences (arts. 44, 45, 47 and 52 of the Criminal Code), couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria, and not be

confined to "the most serious crimes" only, as required under article 6, paragraph 2, of the Covenant. The Committee is also concerned at acknowledged and reported instances of public executions.

The State party should review and amend the above-mentioned articles of the Criminal Code to bring them into conformity with the requirements of article 6, paragraph 2, of the Covenant. The State party should refrain from any public executions. It is invited to work towards the declared goal of abolishing capital punishment.

14. The Committee considers that article 10 of the Criminal Code, under which punishment for an offence not provided for in the Code will be imposed in accordance with those provisions of the Code punishing offences similar in nature and gravity, is incompatible with the concept of "nullum crimen sine lege", enshrined in article 15 of the Covenant.

The State party should repeal article 10 of the Criminal Code.

15. The Committee is deeply concerned about consistent and substantiated allegations of violations, by law enforcement personnel, of article 7 of the Covenant, to which the delegation has not sufficiently responded. The information given by the delegation about the small number of complaints of ill-treatment in custody or detention (six complaints between 1998 and 2000) is difficult to accept as a reflection of the actual situation, in the light of the material available to the Committee, which suggests that the number of instances of ill-treatment and torture is significantly higher.

The State party should ensure that all instances of ill-treatment and of torture and other abuses committed by agents of the State are promptly considered and investigated by an independent body. The State party should institute a system of independent oversight of all places of detention and custody with a view to preventing any act of abuse of power by law enforcement personnel.

16. The Committee takes note of the information provided by the delegation on the conditions of detention in prisons of the Democratic People's Republic of Korea. The Committee nonetheless remains concerned about the many allegations of cruel, inhuman and degrading treatment and conditions and of inadequate medical care in reform institutions, prisons and prison camps, which appear to be in violation of articles 7 and 10 of the Covenant and of the Standard Minimum Rules for the Treatment of Prisoners.

The State party should take steps to improve conditions in the facilities referred to above and all other facilities for detention in the Democratic People's Republic of Korea. It must ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person, as required by article 10 of the Covenant. The State party must ensure that sufficient food and appropriate and timely medical care are available to all detainees. The Committee strongly recommends that the State party allow for independent internal and international inspection of prisons, reform institutions and other places of detention or imprisonment.

17. Notwithstanding the explanations given by the delegation, the Committee continues to harbour serious doubts about the compatibility of the provisions of Chapter Two of the Labour Law of the Democratic People's Republic of Korea, especially articles 14 and 18 thereof, with the prohibition of forced labour contained in article 8, paragraph 3 (a), of the Covenant.

The State party should amend the above-mentioned provisions of the Labour Law so as to avoid any potential conflict with the provisions of article 8 of the Covenant.

18. While noting the delegation's explanations about the nature and purpose of pre-trial detention and about preliminary investigations tending to prolong the duration of pre-trial detention (see paragraph 65 of the report), the Committee remains concerned about the compatibility of the State party's pre-trial detention practices and preliminary investigation procedures with article 9 of the Covenant. The duration of detention before a person is brought before a judge is manifestly incompatible with article 9, paragraph 3, of the Covenant.

The State party's next report should contain statistics on the number of persons held in pre-trial detention and on the duration of and reasons for such detention. The State party must ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge. The State party must ensure that all of its practices are consistent with the provisions of article 9 of the Covenant and that detainees have access to counsel and are permitted to contact their families from the moment of apprehension.

19. The Committee has noted the State party's justification of the "traveller's certificate" which citizens of the Democratic People's Republic of Korea are required to obtain for travel within the country, but considers that such restrictions on domestic travel raise serious questions about their compatibility with article 12, paragraph 1, of the Covenant.

The State party should consider the elimination of the requirement of traveller's certificates.

20. In the Committee's opinion, the requirement, under the Immigration Law of the Democratic People's Republic of Korea, of administrative permission to travel abroad, and the requirement, for foreigners in the Democratic People's Republic of Korea, to obtain exit visas to leave the country, are incompatible with the provisions of article 12, paragraph 2, of the Covenant.

The State party should eliminate the requirement of administrative permission and an exit visa as a general rule and require them only in individual cases that can be justified in the light of the Covenant.

21. While noting that the expulsion of aliens is exercised "with great prudence" (para. 82 of the report), the Committee regrets that there is no law, or formal procedure, governing the expulsion of aliens from the territory of the Democratic People's Republic of Korea.

Before expelling an alien, the State party should provide him or her with sufficient safeguards and an effective remedy, in conformity with article 13 of the Covenant. The State party is urged to consider the adoption of legislation governing the expulsion of aliens, which should be consistent with the principle of non-refoulement.

22. The Committee notes with regret that the delegation was unable to provide up-to-date information about religious freedoms in the Democratic People's Republic of Korea. As only 40,000 citizens of the country (i.e., less than 0.2 per cent of the population), grouped into four religious communities, are said to be "believers", and in the light of information available to the Committee that religious practice is repressed or strongly discouraged in the Democratic People's Republic of Korea, the Committee is seriously concerned that the State party's practice in this respect does not meet the requirements of article 18 of the Covenant.

The State party is requested to provide the Committee with up-to-date information about the number of citizens of the Democratic People's Republic of Korea belonging to religious communities and the number of places of worship, as well as the practical measures taken by the authorities to guarantee the freedom of exercise of religious practice by the communities mentioned in paragraph 112 of the report.

23. The Committee is concerned that various provisions of the Press Law, and their frequent invocation, are difficult to reconcile with the provisions of article 19 of the Covenant. The Committee is concerned that the notion of "threat to the State security" may be used in such ways as to restrict freedom of expression. Also, the Committee is concerned that the permanent presence in the Democratic People's Republic of Korea of foreign media representatives is confined to journalists from three countries, and foreign newspapers and publications are not readily available to the public at large. Moreover, Democratic People's Republic of Korea journalists may not travel abroad freely.

The State party should specify the reasons that have led to the prohibition of certain publications and should refrain from measures that restrict the availability of foreign newspapers to the public. The State party is requested to relax restrictions on the travel abroad by Democratic People's Republic of Korea journalists and to avoid any use of the notion of "threat to the State security" that would repress freedom of expression, contrary to article 19.

24. The Committee has noted the delegation's statement that freedom of assembly is fully respected in the Democratic People's Republic of Korea. The Committee remains concerned, however, about restrictions on public meetings and demonstrations, including possible abuse of the requirements of the laws governing assembly.

The Committee requests the State party to provide additional information on the conditions for public assemblies and, in particular, to indicate whether and under what conditions the holding of a public assembly can be prevented and whether such a measure can be appealed.

25. The provisions of article 25 include the right of every citizen of a State party to have the right and the opportunity, without the restrictions mentioned in article 2 and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives (art. 25 (a)), and to vote or be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the wish of the electors. The Committee has taken note of the delegation's explanation that, as there has been no popular manifestation of any desire to create new political parties, no regulation or legislation governing the creation and registration of political parties is currently envisaged. The Committee considers that this situation runs counter to the provisions of article 25 of the Covenant, as it may adversely affect the rights of citizens to participate in the conduct of public affairs through freely chosen representatives, as required by article 25.

The State party should refer to the Committee's General Comment 25 on article 25, adopted at its fifty-seventh session, as guidance in respect of the above issues, with a view to ensuring full compliance with the provisions of article 25.

26. While noting the delegation's statement that trafficking of women does not exist in the Democratic People's Republic of Korea, the Committee remains seriously concerned at the number of substantiated allegations about trafficking of women, in violation of article 8 of the Covenant, brought to its attention by non-governmental and other sources, including the report of the Special Rapporteur on violence against women of the Commission on Human Rights.

The State party should investigate the above allegations further, in a spirit of cooperation, and report its findings to the Committee.

27. The Committee notes with concern the low level of representation of women at the more senior levels of the public sector, as well as the absence of any precise data on the representation of women in other sectors of the economy, including their level of responsibility.

The State party is requested to take measures to implement articles 3 and 26 of the Covenant by improving women's participation in the public sector workforce, especially in senior positions, and to provide the Committee with statistical data on the status of women, in particular as to the level of their responsibility and remuneration in the major economic sectors.

28. The State party should ensure that its second periodic report, and the present concluding observations, are disseminated widely.

29. The State party should indicate within one year, in accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the measures it has taken or envisages to give effect to the Committee's recommendations contained in paragraphs 15, 22, 23, 24 and 26 of the present concluding observations.

30. The Committee requests that the information relating to its other recommendations and to the Covenant as a whole should be included in the third periodic report of the Democratic People's Republic of Korea, to be submitted by 1 January 2004.